
UTAH LABOR COMMISSION

DAVID ROWSELL,

Petitioner,

vs.

**BEST WESTERN CORAL HILLS and
WASATCH CREST/UTAH GUARANTY
FUND; RED CLIFFS REHABILITATION
and WORKERS COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 02-1196

Case No. 04-0360

Aaron Prisbrey asks the Utah Labor Commission to review Administrative Law Judge Marlowe's award of attorney's fees to Mr. Prisbrey for his representation of David Roswell with respect to Mr. Rowsell's claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Rowsell filed a workers' compensation claim against Best Western Coral Hills and its insurance carrier, Wasatch Crest/Utah Guaranty Fund (referred to jointly as "Best Western"). While that claim was pending before the Labor Commission, Mr. Rowsell was involved in two additional accidents while working for Red Cliffs Rehabilitation. Mr. Rowsell filed a workers' compensation claim against Red Hills Rehabilitation and its insurance carrier, Workers Compensation Fund (referred to jointly as "Red Hills"). Ultimately, Mr. Rowsell entered into separate settlement agreements with Best Western and Red Hills. Judge Marlowe combined the settlement amounts for purposes of computing Mr. Prisbrey's attorney's fee. In his motion for review, Mr. Prisbrey argues that attorney's fees should be computed and awarded separately for each settlement.

FINDINGS OF FACT

The Commission finds the following facts relevant to the issue raised by Mr. Prisbrey's motions for review. On October 28, 2002, Mr. Prisbrey filed a claim for workers' compensation medical benefits on behalf of Mr. Rowsell. This claim alleged that Mr. Rowsell had suffered back injuries on April 19, 2001, while working for Best Western.

Mr. Rowsell's claim against Best Western was set for hearing before Judge Marlowe on

ORDER AFFIRMING ALJ'S DECISION
DAVID ROWSELL
PAGE 2 OF 4

November 5, 2003. However, one week before the hearing, Mr. Prisbrey informed Judge Marlowe that Mr. Rowsell had been involved in additional accidents while working for Red Cliffs Rehabilitation and had either exacerbated his existing back problems or suffered additional back injuries. Mr. Prisbrey advised Judge Marlowe that Mr. Rowsell would amend his pending claim for workers' compensation benefits to include Red Cliffs Rehabilitation and its insurance carrier, Workers Compensation Fund (referred to jointly as "Red Cliffs"). Judge Marlowe therefore cancelled the upcoming hearing.

On March 3, 2004, Judge Marlowe wrote to Mr. Prisbrey, reminding him of his representation that Mr. Rowsell would be filing an amended application to include his claim against Red Cliffs. Mr. Prisbrey responded with a letter to Judge Marlowe on April 13, 2004. In this letter, Mr. Prisbrey reported that Best Western and Red Cliffs were each attributing liability for Mr. Rowsell's low back problems to the other. Specifically, Mr. Prisbrey stated:

Essentially both of the workers' compensation carriers are pointing the finger at the other. From Mr. Rowsell's standpoint it probably doesn't matter who pays, as long as someone pays. I would ask that the case which has been filed today against Red Cliffs Regional be consolidated with the current case against Best Western Coral Hills/LWP.

The Commission actually received Mr. Rowsell's application for hearing against Red Cliffs on April 19, 2004. On June 14, 2004, Mr. Prisbrey amended Mr. Rowsell's claims against Best Western and Red Cliffs to include a claim for permanent total disability benefits. Judge Marlowe then scheduled an evidentiary hearing on Mr. Rowsell's claims against Best Western and Coral Hills.

At the hearing, Mr. Rowsell, Best Western and Red Cliffs all agreed that Judge Marlowe should appoint a medical panel to evaluate the cause or causes of Mr. Rowsell's "low back condition." However, before the medical panel could complete its work, Mr. Rowsell entered into separate settlement agreements with Best Western and Red Cliffs. Best Western agreed to pay Mr. Rowsell a lump sum of \$65,000 as full and final settlement of all Mr. Rowsell's claims against Best Western. Red Cliffs agreed to pay Mr. Rowsell a lump sum of \$50,000 as full and final settlement of Mr. Rowsell's claim for disability benefits. Red Cliffs also agreed to pay Mr. Rowsell's future expenses for medical care necessary to treat his low back condition.

Each of the foregoing settlement agreements computed Mr. Prisbrey's attorney's fee on the full amount of that agreement's lump sum payment. In particular, the settlement agreement between Mr. Rowsell and Best Western provided for an attorney's fee of \$9,650, thereby reducing the amount Mr. Rowsell would actually receive to \$55,350. Similarly, the settlement agreement between Mr. Rowsell and Red Cliffs provided for an attorney's fee of \$8,150, reducing Mr. Rowsell's compensation to \$41,850.

ORDER AFFIRMING ALJ'S DECISION
DAVID ROWSELL
PAGE 3 OF 4

DISCUSSION

Section 34A-1-309 of the Utah Labor Commission Act grants the Labor Commission “full power to regulate and fix the fees of attorneys” in cases coming before the Commission. Pursuant to this authority, the Commission has promulgated Rule 602-2-4, “to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.” In summary, Rule 602-2-4 computes attorney’s fees by applying a sliding percentage scale to the disability benefits obtained as a result of an attorney’s services. The rule also places a cap on the amount of such fees.

Because of the structure and limitations of the Commission’s attorney’s fee rule, applicants’ attorneys sometimes characterize their services to clients as involving several different cases, so as to obtain a separate award of attorneys’ fees for each such “case.” By pursuing this strategy, the attorney obtains a larger overall award and may escape Rule 602-2-4’s cap on fees. This case provides an illustration of the situation described above. If Mr. Prisbrey’s attorney’s fees are computed **separately** on the payments made by Best Western and Red Cliffs, Mr. Prisbrey will receive an attorney’s fee of \$17,800. But if attorney’s fees are computed on the **sum** of Best Western and Red Cliff’s payments, the attorney’s fees will be capped at \$10,850 and the difference between the two amounts will be paid to Mr. Rowsell.

In most workers’ compensation cases, the application of Rule 602-2-4 is relatively straightforward, but the rule can become difficult to apply in unusual workers’ compensation proceeding. In these difficult cases, the rule should not be applied mechanically on the basis of labels or artificial distinctions. Instead, the rule should be applied according to the underlying realities of the case.

In judging the underlying realities of Mr. Rowsell’s case, the Commission notes that Mr. Rowsell’s claim was for permanent disability from a low back injury caused by accidents at Best Western, or Red Cliffs, or a combination of those accidents. It was Mr. Rowsell who asked that his claims against Best Western and Red Cliffs be consolidated into one proceeding, and Mr. Prisbrey himself accurately described the realities of the situation in his letter of April 13, 2004, stating that Best Western and Red Cliffs were “pointing the finger at the other” and that “[f]rom Mr. Rowsell’s standpoint it probably doesn’t matter who pays, as long as someone pays.”

In fact, Best Western and Red Cliffs both paid, by sharing liability for Mr. Rowsell’s injury. It is of little significance that this sharing of liability was implemented through two settlement agreements instead of one. It is the result that is important, and the result is that Mr. Rowsell settled his claims for disability compensation, including any right to lifetime permanent total disability compensation, for a lump sum of \$115,000. Under these circumstances, Judge Marlowe correctly concluded that Mr. Prisbrey’s attorney’s fee should be determined by applying Rule 602-2-4 to this lump sum amount.

ORDER AFFIRMING ALJ'S DECISION
DAVID ROWSELL
PAGE 4 OF 4

ORDER

The Commission affirms Judge Marlowe's decision. It is so ordered.

Dated this 27th day of April, 2007.

Sherrie Hayashi
Utah Labor Commissioner